IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - LAW DIVISION
TAX AND MISCELLANEOUS REMEDIES SECTION

Naomi Treece,	)	
	)	
Petitioner/Appellant,	)	
v.	)	No. 87 L 51221
	)	
Industrial Commission of Illinois and Lyons Township High School	)	
	)	
Respondent/Appellees.	)	
	)	
Lyons Township High School,	)	
	)	
Plaintiff	)	
v.	)	No. 90 L 50184
	)	Consolidated
Naomi Treece and The Illinois Industrial Commission	)	
	)	
Defendants.	)	

MEMORANDUM DECISION AND JUDGMENT

This matter is before the Court for judicial review of a Decision and Opinion on Remand of the Illinois Industrial Commission (the Commission) awarding Petitioner/Appellant-Defendant, Naomi Treece (Petitioner), temporary total disability (TTD) benefits for a period of _____ weeks total and permanent disability (TPD) benefits commencing November 19, 1984, necessary medical expenses of $1,511.17 and additional compensation of $15,492.00 and $2,500.00 and attorneys fees of $3,098.00, pursuant to Sections 8(b), 8(f), 19(k), 19(l) and 16 of the Worker's Compensation Act (the Act).

FINDINGS, CONCLUSIONS AND DECISION OF THE ARBITRATOR See Attachment A.

FINDINGS, CONCLUSIONS AND DECISION OF THE ARBITRATOR See Attachment B.

FINDINGS, CONCLUSIONS AND DECISION OF THE ARBITRATOR See Attachment C

FINDINGS, CONCLUSIONS AND DECISION OF THE COMMISSION See Attachment D

MEMORANDUM DECISION AND JUDGMENT ORDER
See Attachment E

FINDINGS, CONCLUSIONS AND DECISION ON REMAND OF THE COMMISSION See Attachment F

STATEMENT OF FACTS

This case arises out of Petitioner's claim for workers' compensation benefits. Petitioner has had three arbitration hearings before the Commission with respect to her right to receive workers' compensation benefits from Respondent/Appellee-Plaintiff, Lyons Township High School (Respondent). The first arbitration proceeding was a result of her attorneys filing a petition pursuant to Section 19(b) of the Act, for TTD benefits. On February 19, 1981, Arbitrator Green awarded Petitioner 9-3/7 weeks of TTD payments and certain medical expenses. Arbitrator Green based his award on the testimony of her treating physician, Dr. John Mullan. It was Dr. Mullan's opinion that at that time Petitioner suffered from a post-concussion syndrome.

On December 21, 1981, Arbitrator Green, again pursuant to a Petition under Section 19(b) of the Act, awarded Petitioner 24 weeks of TTD benefits. He also awarded her reasonable medical expenses incurred to that date. The Arbitrator found Petitioner's complaints to be credible and consistent with the findings of her treating physician, Dr. Mullan.

The final arbitration hearing concerned Petitioner's petition for additional TTD and permanency benefits under the Act. Evidence was received, and the entire record was transferred to Arbitrator

Galicia for decision. On June 25, 1986, Arbitrator Galicia awarded Petitioner an additional 103 weeks of TTD benefits. He found that Petitioner had suffered a post-concussion syndrome, as described by Dr. Mullan, for a period of time up to and including November 11, 1982. The Arbitrator found that the claim for benefits and medical expenses, after November 11, 1982, was not reasonably related to the work accident in question. Arbitrator Galicia's opinion was based in part on testimony that on November 11, 1982, Dr. Mullan encouraged Petitioner to return to work on that date. Arbitrator Galicia denied permanency benefits based in part upon Dr. Glista's opinions and testimony. The testimony of Dr. Glista, at the last arbitration hearing, was that Petitioner did not suffer from a post-concussion syndrome, but was suffering from a major depressive disorder, suicidal ideations, over eating, persomviolence, narcolepsy, and loss of interest in sex. It was Dr. Glista's opinion that this psychological condition was not causally related to the accident at issue.

Petitioner sought review of Arbitrator Galicia's award and decision with the Commission. Additional evidence was received by the Commission, which adopted Arbitrator Galicia's decision, and found Petitioner suffered from a psychological disorder which was not causally related to the injury. The Commission adopted the Arbitrator's finding with regard to Dr. Mullan's releasing Petitioner to return to work on November 11, 1982. The Commission noted Petitioner was not cooperative with Respondent's rehabilitation specialist who attempted to find Petitioner work. The Commission adopted the opinion of Dr. Glista, that Petitioner's condition of ill-being, at the time of the third arbitration, a major depressive disorder, suicidal ideations, over eating, hypersomviolence, narcolepsy, and loss of interest in sex (all psychological disorders), was not causally related to the accident in question.

Petitioner sought Circuit Court review, in Case No. 87 L 51221, to set aside the Commission's decision. On April 17, 1989, this Court issued its Memorandum Decision and Judgment Order. The Court determined that Arbitrator Galicia had erred in reviewing the prior record compiled by Arbitrator Green, regarding the credibility of Petitioner, as it was improper for Arbitrator Galicia to again determine the issue of Petitioner's credibility that was

previously heard and determined by Arbitrator Green. The Court determined the error was prejudicial and remanded the cause to the Commission to reconsider its opinion in light of its instruction. The Court also made a determination that Arbitrator Galicia erred in reviewing the prior record compiled by Arbitrator Green, finding a lack of credibility on the part of the psychologist, Mary Weed.

Subsequent to this decision, Respondent brought a motion, pursuant to Section 2-1203 of the Code of Civil Procedure, asking for a re-hearing on the issues which the Court felt dispositive of the case at this point.

On May 5, 1989 the Court modified the April 17, 1989 remand order by making an additional determination that the Commission had erred in misstating the reason for Dr. Mullan's referral of Petitioner to Mary Weed and Mrs. Weed's findings and conclusions. On the issue of Petitioner's condition of ill-being, the Court determined that the Commission was to determine, that at each Section 19(b) hearing, Petitioner established a condition of ill-being, and established that such condition is causally related to the work-related accident. The Court, in its remand order, determined that the Commission's decision, finding that at the first two Section 19(b) hearings, Petitioner suffered from a post-concussion syndrome with some depression, moderately severe decompensation and a mixed bipolar affective disorder, and the Commission's further finding that at the time this matter was heard at the third arbitration hearings on February 25, 1985 and May 29, 1985, Petitioner's condition of ill-being was that of a major depressive disorder, was not against the manifest weight of the evidence.

Following the remand order, Respondent filed a post-trail motion to the Court, requesting the Court to make the decision final and appealable under Supreme Court Rule 301. The Court denied Respondent's motion.

Subsequent to that decision, Respondent moved the Court to certify its May 5, 1989 remand order as appealable under Supreme Court Rule 308 concerning interlocutory appeals. On June 5, 1989, the Court denied Respondent's motion.

Respondent filed a Motion for Leave to File a Complaint for a Writ of Prohibition, pursuant to Illinois Supreme Court Rule 381, with the Illinois Supreme Court. The motion was denied by the Supreme Court. The case was remanded to the Commission for implementation o the instructions contained in this Court's remand order.

On remand the matter was briefed by both parties and both parties submitted proposed decisions to the Commission. At the request of Petitioner, oral argument was heard before the Commission. After oral argument, the Commission reissued its decision, adopting Petitioner's proposed decision verbatim. Respondent filed this judicial review in Case No. 90 L 50184 which was consolidated with Case No. 87 L 51221.

ISSUES PRESENTED FOR REVIEW

1. Whether it was error for the Court to remand the Commission decision on review for further consideration.

2. Whether the Commission, abused the Court's remand order in its Decision on Remand.

3. Whether the finding of the Commission, that Petitioner proved a causal relationship between her accidental injuries of November 17, 1980 and her condition of ill-being, subsequent to November 12, 1982, is against the manifest weight of the evidence.

4. Whether the finding of the Commission, that Petitioner is entitled to additional compensation and attorneys fees, is against the manifest weight of the evidence.

ARGUMENTS OF THE PARTIES AND COMMENTS AND DECISION OF THE COURT

In respect to Issue Number One, Respondent contends that it was error for this Court to remand the Commission decision on review for further consideration; that Section 19(f) of the Act is part of the Illinois legislature's specific statutory system for adjudication of workers' compensation cases; that implicit in this system is that the Commission is the finder of fact and makes conclusions as to a

claimant's eligibility for workers' compensation benefits (United Airlines v. Industrial Commission (1980), 81 Ill.2d 85); that the Circuit Court's and ultimately the Appellate Court's review of Commission decisions is limited to a review provided by the Act (Gunnels v. Industrial Commission (1964), 30 Ill.2d 181); that the Commission decisions are given great deference as to the findings of fact, and in particular, the findings of fact as to the medical evidence; that the Commission is considered the expert in dealing with a claimant's right to receive workers' compensation benefits (Sears Roebuck & Company v. Industrial Commission (1980), 79 Ill.2d 59 and A.O. Smith v. Industrial Commission (1972), 51 Ill.2d 533); that the Commission is given the role of adjudicating questions of credibility and in particular the credibility of medical testimony (Gladstone v. Industrial Commission (1980), 79 Ill.2d 236 and Makris v. Industrial Commission (1980), 82 Ill.2d 502); that under the Act, a Circuit Court is granted a limited role in reviewing these proceedings; that once a Circuit Court has obtained subject matter jurisdiction, under Section 19(f) of the Act, it is to determine whether the Commission's decision is against the manifest weight of the evidence (Guardian Electric Manufacturing Company v. Industrial Commission (1973), 53 Ill.2d 530); that while Respondent acknowledges that the Circuit Court, has the right to remand a case to the Commission under its reviewing power, this right to remand has only been recognized in two types of instances; that the first instance is where the Circuit Court feels there has been error in an evidentiary ruling of the Commission and remands the case to the Commission for further proceedings to correct such error (Technical Tape Corp. v. Industrial Commission (1974), 58 Ill.2d 226); that the second is where the Commission has violated a statutory mandate and not made the requisite "findings of fact and conclusions of law" (National Biscuit, Inc. v. Industrial Commission (1984), 129 Ill.App.118; that in this latter instance, by remand, the Circuit Court instructs the Commission to do what is required by law; that there is no recognized authority for a Circuit Court to do what the Court did in this instance; that in remanding this cause to the Commission, the Court has instructed the Commission to reconsider or "rethink" its decision in light of this Court's instructions; that by so doing, this Court is going behind the Commission's decision and determining item-by-item whether the decision is against the manifest weight of the evidence; that "going behind" the

Commission's decision invades the province of the Commission's expertise; that the Commission has the expertise in determining all disputed issues of fact; that a reviewing court is limited to determining whether the Commission's decisions are against the manifest weight of the evidence; that the Circuit Court is simply to state whether the decision, "as a whole", is against the manifest weight of the evidence; that there is no provision for the Court to consider parts of the decision being against the manifest weight of the evidence or not; that the decision must be taken as a whole and not in "piece meal" fashion; that the result of "piece meal" reconsideration of the decision by the Commission is manifest in this instance; that as set forth above, the Commission disregarded this Court's earlier findings that Petitioner's condition of ill-being was different at the time of the first two Section 19(b) arbitration proceedings than it was at the time of the last arbitration proceeding; that rather than following the Court's limited remand order, the Commission abused the remand order and entered a finding which completely overturned its earlier findings on the issue of Petitioner's condition of ill-being; that such abuse and confusion on the part of the Commission was a result of this Court's attempt to review the Commission's first decision on a "piece meal" basis; that not only did this Court's remand order interject abuse and confusion into the statutory scheme for review, but also deprived Respondent of an opportunity to have a Circuit Court decision on the issue of whether the first Commission decision of October 20, 1987, was against the manifest weight of the evidence; that it is true that Arbitrator Green found that Petitioner was credible with respect to her condition of ill-being at the time of those Section 19(b) hearings, however, as this Court has correctly pointed out, Petitioner's condition of ill-being was different by the time of the third arbitration hearings; that it was within the province of the Commission, at that time, to consider whether Petitioner's complaints were credible with respect to her new condition of ill-being; that the Court found that her new condition of ill-being was a major depressive disorder and thus, while it is possible Petitioner may have been credible in her complaints with respect to a post-concussion syndrome which existed at the earlier two arbitrations hearings, it is still possible that those complaints would not be credible with respect to her new alleged condition of ill-being a major depressive disorder, at the third arbitration hearing, and thus, even if the credibility issue is

resolved in Petitioner's favor, there is still sufficient evidence in the record to support the October 20, 1987 decision of the Commission; that first, there are the opinions of Dr. Glista, Gary Goldetsky, the rehabilitation specialist, Dr. Garron and in addition to Petitioner's testimony; that secondly, even if the Court is concerned with the Commission's characterizations of Mary Weed's testimony or the reasons why Dr. Mullan referred Petitioner to Mary Weed, at best, this testimony would only relate to Mrs. Weed's findings and conclusions as it related to the condition of a post-concussion syndrome, and that these findings and conclusions would not have any bearing on the other condition of ill-being, that a major depressive disorder.

Petitioner responds that this Court's remand order was proper and called for in this cause; that Respondent argues that this Court committed error in remanding this cause to the Commission for consideration pursuant to its remand directions; that this Court's remand order was not only proper, but necessary because of the many prejudicial errors which this Court noted in the Commission's original Decision and Opinion on Review; that in Technical Tape Corp. v. Industrial Commission (1974), 58 Ill.2d 226, the Illinois Supreme Court, with reference to Section 19(f)(2) of the Act, stated at page 232:

> ....provides in part that the circuit court on review "may confirm or set aside the decision of the Commission. If the decision is set aside and the facts found in the proceedings before the Commission are sufficient, the court may enter such decision as is justified by law, or may remand the cause to the Commission for further proceedings and may state the questions requiring further hearing, and give such other instructions as may be proper". See Thompson v. Industrial Com., 377 Ill. 587; National Zinc Co. v. Industrial Com., 292 Ill. 598, 604;

that in Stockton v. Industrial Commission (1977), 69 Ill.2d 120, the Court stated at page 125;

> ...When the circuit court remanded the cause, the Commission had jurisdiction to the same extent as before its first award; however, it was bound by the rules of law

announced and the directions given by the circuit court, and it was bound to follow those directions (Raffaelle v. Industrial Com. (1927), 326 Ill. 166);

that this Court found that the facts which the Commission previously found in its decision of October 20, 1987, were not sufficient and in many ways prejudicial to Petitioner; that based on that such a determination, the Court set aside the Commission's decision and properly remanded this cause to the Commission for re-evaluation of the record in respect to the issue of causal relation and directed that the Commission enter appropriate findings compatible with this re-evaluation and that this is precisely what the Commission did in its Decision and Opinion on Remand.

The Court agrees with Petitioner. Respondent argues that a Circuit Court's right to remand a cause to the Commission is limited to two narrow situations: first, when the Commission errs in respect to evidentiary rulings; and second, when the Commission fails, to make the required findings of fact and conclusions of law. Respondent incorrectly states the law pertaining to the Circuit Court's scope f authority in remanding a matter to the Commission. A Circuit Court may remand for further proceedings, and may also remand with instructions to make additional conclusions findings, to clarify findings, correct errors in evidentiary rulings, or abuses of discretion, and also to correct conclusions of law which are contrary to the law.

Furthermore, a Circuit Court can remand for the purpose of holding an additional hearing to receive additional evidence. In the instant case, the Court first determined that certain findings of the Arbitrator were both contrary to the law and prejudicial. In light of this, the Court remanded the matter to the Commission for it to reconsider its findings based on the Court's determination. The Court's remand order instructed the Commission to 1) re-evaluate the record pertaining to the issue of causal relation, accepting the prior determination of credibility by Arbitrator Green, and 2) make appropriate findings compatible with the aforesaid re-evaluation. It was not error for the Court to remand the Commission decision on review for further consideration.

With respect to Issue Number Two, Respondent contends that the Commission, in its Decision and Opinion on Remand, abused the Court's remand order. Respondent argues that on remand, the Court instructed the Commission to accept that Petitioner was suffering from a psychological condition of ill-being at the time of the third arbitration, which differed from her condition at the time of the earlier two Section 19(b) proceedings; that the Commission on remand failed to follow this Court's instruction concerning the condition of ill-being and completely reversed its decision on the issue of Petitioner's condition of ill-being; that in the remand order, the Commission did not follow this Court's finding that the Commission's first decision, finding that the conditions of ill-being were different, was not against the manifest weight of the evidence; that the Commission abused or violated the Court's remand order by the following;

a) by adopting Dr. Mullan's opinions against Dr. Glista's;
b) by considering the condition of ill-being with respect to Dr. Garron's opinions;
c) by accepting Dr. Marvin Ziporyn's opinion as to the Petitioner's condition of ill-being;
d) by failing to make any finding that Petitioner suffered no organic brain damage at the time of her third and final arbitration based upon Gary Goldetsky's opinion as set forth in the psychological consultation report of November 4, 1982;
e) by failing to follow the Court's order on remand, which stated it was improper for Arbitrator Galicia to misstate the reasons for Dr. Mullan's referral of Petitioner to Mary Weed, in that the Commission on remand completely changed its findings and conclusions with respect to Mary Weed's testimony;
f) by failing to follow the Court's remand order with respect to rehabilitation efforts, which made no reference to any error committed by the Commission in considering its findings and conclusions relating to the testimony of the rehabilitation specialists;
g) by failing to consider the remand order which made no mention of wrong doing on the part of the Commission in considering Dr. Sackett's opinions and conclusions;

that it would not be proper for this Court to enter another remand order to correct the abuse of the Commission decision on remand

but rather, it would be more proper for this Court to vacate the Commission's decision on remand and make a decision as to whether the October 20, 1987 decision, of the Commission, was against the manifest weight of the evidence; that this Court should enter a finding that the first Commission decision was not against the manifest weight of the evidence; that the Court gave two very limited instructions to the Commission to follow on remand; that the Commission failed to follow those limited instructions; that this Court, in re-evaluating the record, should enter an appropriate finding, that, as to the first Commission decision, even assuming that the Court resolves the previously discussed issues of Petitioner's credibility and Mary Weed's testimony in Petitioner's favor, the first commission decision was not against the manifest weight of the evidence; that this Court instructed the Commission to consider the credibility of Petitioner in the earlier Section 19(b) hearings.

Petitioner responds that the Commission's decision and opinion on remand complied with this Court's remand order; that the crux of Respondent's argument is that the Court, on remand, instructed the Commission to accept that Petitioner was suffering from a psychological condition of ill-being at the time of the third proceeding on Arbitration, that was different than her condition at the time of the two prior final Section 19(b) decisions; that this Court merely held that Petitioner's emotional condition was not "the same" at the third proceeding on arbitration as it was at the time of the two prior decisions, and that the Commission's decision was not contrary to law because the Doctrine of Res Judicata was inapplicable; that no decision was made by the Court as to whether the Commission's decision of October 20, 1987, was against the manifest weight of the evidence, since it determined the cause should be remanded to the Commission, because of the numerous prejudicial errors contained therein, and the record pertaining to causal relation should be re-evaluated; that the Court's order was clear, and the Commission properly re-evaluated the record as directed, to determine the ultimate issue of whether Petitioner proved a causal relation between her accidental injuries of November 17, 1980 and her condition of ill-being subsequent to November 12, 1982; that furthermore, the Commission, in its Decision and Opinion on Remand, specifically found that Petitioner's condition of ill-being, subsequent to November 12,

1982, had a significant psychological/psychiatric component, according to Doctors Mullan, Ziporyn, Sackett and Garron; that to this extent all of the doctors agreed with Dr. Glista's opinion that Petitioner had these problems; that the disagreement concerned the cause of the injuries, which was the basis for this Court's remand order; that Respondent argues that virtually every finding which the Commission made in its Decision and Opinion on Remand abused this Court's remand order; that in so doing, it ignores that the purpose the remand order was issued was to evaluate the findings the Court deemed prejudicial to Petitioner, relating to the causal relation; that only by a careful and complete re-examination of the entire record, as directed by this Court, was it possible for the Commission to make the appropriate findings; that Respondent argues that the Commission abused and violated the remand order by: 1) not accepting Dr. Glista's opinion, 2) by adopting Dr. Mullan's opinion (in the deposition which Lyons itself took), 3) by reconsidering Dr. Garron's testimony and re-characterizing his opinion, 4) by accepting Dr. Ziporyn's opinion, 5) by failing to adopt the findings of Gary Goldetsky, a clinical psychology intern retained by Respondent; that Mr. Goldetsky did not state, as Respondent alleges, that Petitioner had no organic brain damage, but stated she did not seem to have any symptoms of typical organic brain syndrome and he believed she suffered from an affective disorder as suggested by Dr. Garron, 6) by accepting Mary Weed's findings and conclusions concerning Petitioner and her behavior; that this argument is made by Respondent, notwithstanding this Court's express finding that:

> ...it was improper for Arbitrator Galicia (sic) to misstate the reason for Dr. Mullan's referral of Petitioner to Mary T. Weed and Ms. Weed's findings and conclusions concerning Petitioner and her behavior. By so doing the finding by Arbitrator, which was affirmed by the Commission, in respect to causal relation was prejudicial to Petitioner;

that this is a further attempt to discredit Mary Weed's findings and conclusions, which were unequivocal; that Respondent refers to a Psychological Vocational Testing Report by its own agents which suggests that Petitioner responded in an atypical and unusual manner....possibly so as to obtain some secondary gain in her

worker's compensation case; that Respondent, however, fails to mention its agent's recommendation, made at the conclusion of the testing, that Petitioner be referred for a follow-up evaluation by a qualified expert; that this follow-up re-evaluation request was ultimately canceled by Respondent; that furthermore, Respondent fails to mention the fact that none of the three doctors to whom it referred Petitioner for evaluation, Doctors Garron, Glista and Sackett, ever suggested she was malingering or otherwise attempting to obtain some secondary gain through her pending worker's compensation case, 7) by reconsidering and changing its findings and conclusions with respect to rehabilitation efforts made on Petitioner's behalf; 8) by considering the statements and opinions of Dr. Sackett, Respondent's examining psychiatrist, whose unequivocal opinion as to Petitioner's condition of ill-being and the causal relationship between her original injury and her condition was never mentioned in the Arbitrator's decision or in the Commission's decision and opinion on review of October 20, 1987; and 9) by entering penalties and attorney's fees pursuant to Sections 19(k), (1) and Section 16 of the Act; that this Court remanded this cause to the Commission and directed it to re-evaluate the record in respect to the issue of causal relation and make appropriate findings compatible with its re-evaluation and that the Commission followed this Court's direction to the letter and its Decision and Opinion on Remand fully and accurately reflects what was necessary to comply with the remand order and the issuance of full, complete and appropriate findings consistent therewith.

Respondent replies that Petitioner has mischaracterized and misstated this Court's ruling with respect to the question of Petitioner's condition of ill-being; that throughout these proceedings, it had been Petitioner's position that the Commission erred in finding that Petitioner suffered from a condition of ill-being that was different from her condition of ill-being at the time of the earlier two Section 19(b) arbitration proceedings in its Decision and Opinion on Review; that this Court reviewed both the arguments of Petitioner and Respondent prior to rendering its original decision; that Petitioner argued that the Commission's finding, as to the question of Petitioner's condition of ill-being, in its original decision, was both contrary to the law and against the manifest weight of the evidence; that this Court explicitly stated

that the Commission's finding, that the condition of ill-being was different at the time of the third and final arbitration, was not contrary to law and not against the manifest weight of the evidence; that this Court stated in its remand order at page 6:

> The Court agrees with the Respondent. A review of the record reveals that the Arbitrator made an implicit finding that the condition of ill-being was different than the condition of ill-being at the prior hearings. The Court determines that the implicit finding is not against the manifest weight of the evidence. Some evidence of an emotional condition of ill-being was before the Arbitrator at the prior hearings, however, there was no express finding of a causal relation between Petitioner's accidental injuries of November 17, 1980 and her emotional condition.....Furthermore, a claimant must establish that the condition at the subsequent proceeding is the same condition that existed at the prior proceeding in order for Doctrine of Res Judicata (sic) to apply. The emotional condition at the prior proceeding was that the petitioner had some depression and a mixed bipolar affective disorder. The emotional condition in the subsequent proceeding was that of a major depressive disorder. The issues must be the same. The emotional conditions were different. The Doctrine of Res Judicata does not apply (emphasis added);

that Petitioner attempts to argue that this Court gave no instruction to the Commission on remand on Petitioner's condition of ill-being; that by this Court finding that the Commission made no error in rendering its decision as to Petitioner's condition of ill-being, it was instructing the Commission on remand no to reconsider the question of Petitioner's condition of ill-being at the time of the final arbitration; that on remand the Commission was to accept that Petitioner's condition of ill-being was emotional, and a major depressive disorder, at the time of the final arbitration; that this Court gave no discretion on remand to the Commission to decide Petitioner's condition of ill-being at the third and final arbitration; that Petitioner has asked this Court to ignore the Commission's findings on remand on the question of Petitioner's condition of ill-being; that Petitioner suggests that this Court's remand order was quite clear in allowing the Commission re-evaluate the record for and determine the following issue:

Did Treece prove a causal connection between her accidental injuries of November 17 and her condition of ill-being subsequent to November 12, 1982;

That while this Court instructed the Commission to re-evaluate the record with respect to the question of causal relation this Court was also very clear that the Commission should accept the Commission's prior determination of Petitioner's condition of ill-being; that it is not disputed that the Commission re-evaluated the record with respect to the question of the causal relation between Petitioner's condition of ill-being and the accidental injuries; that what the Commission failed to do was follow this Court's determination that there was no error with respect to the Commission's earlier findings on Petitioner's condition of ill-being; that the Commission on remand violated and abused that part of this Court's remand order; that the basis for the Commission's original finding, that Petitioner had suffered a different condition of ill-being, was Petitioner's own testimony, the opinions of Dr. Glista, the opinions of Dr. Garron and the evidence and testimony of the rehabilitation specialist; that on the question of Petitioner's condition of ill-being at the time of the third and final arbitration, the Commission relied upon the testimony Dr. Glenn Glista and his opinions; that Dr. Glista was of the opinion that Petitioner was suffering from a condition that was different than her earlier condition of ill-being at the earlier two Section 19(b) proceedings; that logically, if the Commission found that the condition of ill-being was different at the time of the third and final arbitration, the Commission could not accept Dr. Mullan's opinion as to Petitioner's condition of ill-being; that Dr. Mullan gave an opinion that Petitioner was suffering from the same condition of ill-being at the time of the third and final arbitration as Petitioner suffered from at the time of the two earlier Section 19(b) proceedings; that for the Commission to now adopt Dr. Mullan's opinions on the condition of ill-being would violate this Court's remand order; that it is undisputed that Dr. Mullan's opinion was that Petitioner suffered from a post-concussion syndrome, and not an emotional condition at all relevant time periods; that the Commission on remand also violated the Court's remand order in that it found that Dr. Garron was of the opinion that there was an organic component to Petitioner's condition of ill-being; that again, by implication, the Commission on remand should have been limited

to accepting that Petitioner's condition of ill-being, at the time of the third and final arbitration, was strictly an emotional or psychological condition; that also, by implication, the Commission could not consider Dr. Ziporyn's opinion on the condition of ill-being, as he held his opinion was the same as Dr. Mullan's; that notwithstanding this Court's instructions, the Commission accepted Dr. Ziporyn's opinion as to Petitioner's condition of ill-being and thus violated this Court's remand order; that Petitioner stated that Respondent had objected to every finding the Commission made on remand and by so doing, Petitioner claims that Respondent has ignored the reason for the remand which was a re-evaluation of the record; however, the reason Respondent objected to the Commission's decision on remand was because the finding of the Commission violated this Court's remand order, specifically on the question of Petitioner's condition of ill-being; that this Court's remand order was limited to a re-evaluation of the record with two very narrow instructions; that the Commission on remand completely exceeded the scope of remand order; that the remand order called for the Commission to reconsider its position concerning the reasons why Dr. Mullan referred Petitioner to Mary Weed, the registered psychologist and to accept that Petitioner's condition of ill-being was credible in the two earlier Section 19(b) arbitration proceedings; that what the Commission did on remand was to completely re-evaluate the record and consider matters which this Court had found were not objectionable - namely, that the Commission in its first decision on review had made no error in its findings with respect to Petitioner's condition of ill-being; that this complete re-evaluation of the record, including a recharacterization by the Commission of the opinions of Dr. Glista, Dr. Garron and the rehabilitation specialist, is extremely prejudicial to Respondent; that instead of re-evaluating and clarifying the reasons for Dr. Mullan's referral and Petitioner's credibility for this Court, the Commission completely reversed its earlier decision; that this Court's original instruction was that the Commission should clarify whether it was making a new finding with respect to credibility on the issue of causal relation or whether it was overturning an earlier finding from the earlier Section 19(b) arbitration proceedings; that such clarification was required by this Court's remand order; that this Court also instructed the Commission to properly state the reasons for Dr. Mullan's referral of Petitioner to Mary Weed; that the Commission was to merely

clarify these reasons and set forth its opinions and conclusions thereof without completely overturning its findings and conclusions thereof without completely overturning its findings and conclusions on the other issues, such as Petitioner's condition of ill-being; that Petitioner states that "Lyons, however, fails to mention its agent's recommendation, made at the conclusion of testing, that Treece be referred for follow-up evaluation by a qualified expert; this follow-up evaluation request was ultimately cancelled by Lyons"; that this is inaccurate as the psychologist who performed the tests, Dr. Aronoff, and Gary Goldetsky recommended that Petitioner be examined by an independent neurologist to determine if there are any organic component to Petitioner's condition; that Petitioner was examined by a neurologist, Dr. Glista, who did not document any physiological or organic component to her behavior and thus, it is inaccurate for Petitioner to suggest that Respondent never acted upon the recommendation of the psychologist; that moreover,t he psychologist, Dr. Aronoff, and Gary Goldetsky, in their report, stated that Petitioner's job responsibilities were very modest and felt that she should return to work, as "it would be useful to provide a structured experience to improve Petitioner's self-concept and help her combat the feeling of helplessness and inactivity"; that Petitioner further stated that Doctors Garron, Glista and Sackett never suggested Petitioner was malingering or otherwise attempting some secondary gain through her pending worker's compensation case, which mischaracterized Arbitrator Galicia's findings' that Arbitrator Galicia did not state that she was malingering for secondary gain, but based his statement upon the psychologist's investigation and Mrs. Weed's investigation, which corroborated the psychologist's testing, there was a strong possibility of malingering, and that it was the psychologist who said, "in the absence of neurological signs, a possibility for malingering for secondary gain should be investigated."

The Court agrees with Petitioner. The remand order instructed the Commission to 1) re-evaluate the record in respect to the issue of causal relation, accepting the prior determination of credibility by Arbitrator Green and 2) make appropriate findings compatible with the aforesaid re-evaluation. The Commission complied with the order of remand by re-evaluating the record in respect to the issue of causal relation and by making appropriate findings compatible with the re-evaluation.

In respect to Issue Number Three, Respondent contends that the finding of the Commission, that Petitioner proved a causal relationship between her accidental injuries of November 17, 1980 and her condition of ill-being, subsequent to November 12, 1989, is against the manifest weight of the evidence. Petitioner argues that the findings of the Commission are not compatible with the findings of Arbitrator Galicia, the findings contained in its decision of October 20, 1987 and are not supported by the record.

Petitioner responds that the Commission's findings on remand clearly establish there was a causal relationship between her accidental injuries of November 17, 1980 and her present condition of ill-being; that acting upon the directions set out in this Court's remand order, the Commission carefully re-evaluated the record and determined, there was a causal relationship; that the one omission from the Commission's Decision and Opinion on Remand was the admission by Respondent's attorney to Arbitrator Sherman that in Dr. Garron's opinion Petitioner's mental condition of ill-being was causally related to her work accident;

THE ARBITRATOR: "I think what he" (Dr. Garron) "said was that in his opinion her condition was causally related to the accident."

MR. GAROFALO: "Correct".

that the Commission's Decision and Opinion on Remand fully complied with the terms of this Court's remand order, is fully supported by the record and contains an implicit finding, that its prior Decision and Opinion on Review, dated October 20, 1987, was against the manifest weight of the evidence.

Respondent replies that Petitioner states that there was one omission in the Commission's decision concerning an alleged stipulation regarding Dr. Garron's opinion as to Petitioner's condition of ill-being and causal relation; that this omission was made by Petitioner's attorney in preparing the proposed decision on remand as the Commission adopted Petitioner's proposed decision verbatim; that moreover, Dr. Garron had no opinion on the issue of causal relation and that the Commission has previously found that Dr. Garron was of the opinion that Petitioner had to be weaned from her medication and hospitalized before he was to

render any opinion as to whether Petitioner's condition of ill-being was causally related to the work-related injuries.

The Court agrees with Petitioner. The Court has reviewed the findings of the Arbitrator subsequent to the third arbitration hearing; the October 20, 1987 decision of the Commission, the Memorandum Decision and Judgment Order of this Court dated May 5, 1989, the decision and Opinion on Remand and the entire record. The Court has applied an extra degree of scrutiny to the record and determines the finding of the Commission, that Petitioner's condition of ill-being subsequent to November 12, 1982, is causally related to the accidental injuries sustained on November 17, 1980, is not against the manifest weight of the evidence. There is evidence in the record that Petitioner had a post-concussion syndrome which had both organic and clear functional (psychological) components resulting from the accident of November 17, 1980. This Court previously determined that the emotional condition existing at the prior proceedings was both depression and a mixed bipolar affective disorder, however the emotional condition in the subsequent proceeding was a major depressive disorder (emphasis supplied). The Court further determined that these conditions were different, and the Doctrine of Res Judicata did not apply. The Court further determined that the implicit finding of the Arbitrator, at the subsequent proceeding was not against the manifest weight of the evidence. This determination did not preclude a further finding, by the Commission, that the subsequent emotional condition of ill-being was causally related to the prior emotional condition of ill-being. The Commission's finding is supported by the record. In any event, it is not against the manifest weight of the evidence.

In respect to Issue Number Four, Respondent contends that the finding of the Commission, that Petitioner is entitled to additional compensation and attorneys fees, is against the manifest weight of the evidence. Respondent argues that the Commission's finding, that Respondent's failure to pay compensation benefits, subsequent to April 10, 1983, was unreasonable and vexatious is not supported by the record.

Petitioner argues that the Commission made preliminary findings to support its finding that Respondent's failure to pay was

unreasonable and vexatious and the findings are not against the manifest weight of the evidence.

The Court agrees with Petitioner. Paragraphs 10 and 11 of the Commission's Decision and Opinion on Remand gives substantial reasons for its finding that Respondent's failure to pay compensation benefits subsequent to April 10, 1983, was unreasonable and vexatious. The finding is supported by the record. In any event, it is not against the manifest weight of the evidence.

The decision of the Commission is confirmed.

Date: March 25, 1991

Enter: Judge Alexander P. White